

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of April, two thousand sixteen.

PRESENT:

REENA RAGGI,
DENNY CHIN,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

QUAN LIN,
Petitioner,

v.

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

14-1723
NAC

FOR PETITIONER: David A. Bredin, Esq., Flushing,
New York.

FOR RESPONDENT: Benjamin C. Mizer, Principal
Deputy Assistant Attorney
General; Linda S. Wernery,

1 Assistant Director; Gregory M.
2 Kelch, Trial Attorney, Office of
3 Immigration Litigation, United
4 States Department of Justice,
5 Washington, D.C.
6

7 UPON DUE CONSIDERATION of this petition for review of a
8 Board of Immigration Appeals ("BIA") decision, it is hereby
9 ORDERED, ADJUDGED, AND DECREED that the petition for review is
10 DENIED.

11 Petitioner Quan Lin, a native and citizen of the People's
12 Republic of China, seeks review of an April 29, 2014 decision
13 of the BIA affirming a March 8, 2012 decision of an Immigration
14 Judge ("IJ") denying Lin's application for asylum, withholding
15 of removal, and relief under the Convention Against Torture
16 ("CAT"). *In re Quan Lin*, No. A087 651 141 (B.I.A. Apr. 29,
17 2014), *aff'g* No. A087 651 141 (Immig. Ct. N.Y. City Mar. 8,
18 2012). We assume the parties' familiarity with the underlying
19 facts and procedural history in this case.

20 We review the IJ's decision as modified by the BIA. On the
21 facts of this case, therefore, we consider the IJ's adverse
22 determinations as to Lin's claimed past persecution and
23 professed fear of future persecution without reviewing the IJ's
24 finding of untimeliness, which the BIA declined to consider.
25 *See Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 522 (2d Cir.

2005) (reviewing IJ judgment as modified by BIA, *i.e.*, minus single argument rejected by BIA). The applicable standards of review are well established. See 8 U.S.C. § 1252(b)(4)(B); see also *Su Chun Hu v. Holder*, 579 F.3d 155, 158 (2d Cir. 2009).

1. Past Persecution: Adverse Credibility Determination

The agency may, “[c]onsidering the totality of the circumstances,” base a credibility finding on an asylum applicant’s demeanor, the plausibility of his account, and inconsistencies in his statements and other record evidence “without regard to whether” they go “to the heart of the applicant’s claim.” 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 163-64 (2d Cir. 2008). Substantial evidence supports the agency’s adverse credibility determination here.

Specifically, the IJ reasonably relied on Lin’s evasive and unresponsive demeanor when testifying about his asylum interview and the use of his own passport to depart China. See 8 U.S.C. § 1158(b)(1)(B)(iii). “[W]e accord[] particular weight” to an IJ’s evaluation of an applicant’s demeanor where, as here, it finds support in the record. *Majidi v. Gonzales*, 430 F.3d 77, 81 n.1 (2d Cir. 2005).

1 The IJ's adverse demeanor finding and credibility
2 determination are bolstered by record inconsistencies
3 regarding how police transported Lin to the police station and
4 how his family paid for his release from detention. *See Li Hua*
5 *Lin v. U.S. Dep't of Justice*, 453 F.3d 99, 109 (2d Cir. 2006);
6 *see also Xiu Xia Lin*, 534 F.3d at 165-67. Lin did not provide
7 compelling explanations for these inconsistencies. *See*
8 *Majidi*, 430 F.3d at 80.

9 The agency also reasonably found it implausible that Lin
10 would have used his own passport to depart China when he claimed
11 to have been released from detention on the condition that he
12 remain in his local area. *See Wensheng Yan v. Mukasey*, 509 F.3d
13 63, 67-68 & n.2 (2d Cir. 2007). Given these demeanor,
14 inconsistency, and implausibility findings, substantial
15 evidence supports the agency's determination that Lin was not
16 credible as to his claim of past persecution. *See Xiu Xia Lin*,
17 534 F.3d at 165-66.

18 2. Well-Founded Fear of Future Persecution

19 Absent past persecution, an alien may establish
20 eligibility for asylum by demonstrating a well-founded fear of
21 future persecution, *see* 8 C.F.R. § 1208.13(b)(2), which must
22 be both subjectively credible and objectively reasonable, *see*

1 *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004).
2 To establish a well-founded fear, an applicant must show either
3 that he would be singled out for persecution or that the country
4 of removal has a pattern or practice of persecuting those
5 similarly situated to him. 8 C.F.R. § 1208.13(b)(2)(iii).
6 The record did not here compel the agency to find that Lin
7 established a well-founded fear of persecution in China on
8 account of his practice of Christianity while in the United
9 States.

10 The record evidence of country conditions demonstrates
11 that between fifty and seventy million Christians practice in
12 unregistered churches in China, and that in some areas such
13 practice is tolerated without interference. Therefore, the
14 agency did not err in determining that Lin failed to demonstrate
15 either that officials are likely to discover his religious
16 practice in the United States, see *Hongsheng Leng v. Mukasey*,
17 528 F.3d 135, 142-43 (2d Cir. 2008), or that the persecution
18 of similarly situated Christians "is so systemic or pervasive
19 as to amount to a pattern or practice of persecution" in China,
20 *In re A-M-*, 23 I. & N. Dec. 737, 741 (B.I.A. 2005) (citation
21 omitted); see also *Santoso v. Holder*, 580 F.3d 110, 112 & n.1
22 (2d Cir. 2009).

1 Accordingly, because the agency reasonably found that Lin
2 failed to demonstrate a well-founded fear of persecution on
3 account of his practice of Christianity, it did not err in
4 denying asylum, withholding of removal, and CAT relief because
5 those claims were based on the same factual predicate. See
6 *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006).

7 For the foregoing reasons, the petition for review is
8 DENIED. As we have completed our review, any stay of removal
9 that the Court previously granted in this petition is VACATED,
10 and any pending motion for a stay of removal in this petition
11 is DISMISSED as moot. Any pending request for oral argument
12 in this petition is DENIED in accordance with Fed. R. App. P.
13 34(a)(2) and Second Circuit Local Rule 34.1(b).

14 FOR THE COURT:
15 Catherine O'Hagan Wolfe, Clerk